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ceive, gives execution against the property, just as a court of law gives execution against the property of other debtors." Judge REDFIELD, in a note to the case of *Todd v. Lee, supra*, 1 Am. Law Reg. p. 665, says of this decision, that "This view of the law is given by one of the ablest and most experienced equity judges now living, and upon a full review of all the English cases, and we must confess that it seems to us to have stripped the matter of much of its former complication and confusion, and to be far more satisfactory than any other view which we have yet seen." We think, at least, that the debts contracted by the wife are in no legal sense an encumbrance on her separate estate, and therefore not embraced in the restriction on her power of disposition contained in the *proviso*.

The court below erred in sustaining the demurrer to the complaint.

Judgment reversed with costs; cause remanded with directions to overrule the demurrer to the complaint, and for further proceedings.

Supreme Court of California.

WHEELER v. SAN FRANCISCO AND ALAMEDA RAILROAD
COMPANY.

A ferry-boat or other means to cross a body of water on the line of a railroad, whether in the middle or at the end of the route, is part of the necessary property of the railroad; and the company is liable for neglect to carry a passenger across this, as well as any other part of the route.

It is settled that a railroad company may contract to carry passengers or freight beyond its own route, and the liability as a common carrier continues through the whole distance contracted for.

THE opinion of the court was delivered by

SAWYER, J.—This is an action brought against the defendant as a common carrier of passengers and freight, to recover damages sustained by plaintiff in consequence of a breach of duty on the part of defendant in refusing to carry the plaintiff across the bay of San Francisco to the city of San Francisco from the defendant's wharf, at the terminus of its railroad, in the county of Alameda, in a steamer under the control of defendant, which ran regularly between the said points in connection with the regular

trains on said railroad. The fact that said defendant was, at the time, a common carrier of passengers and freight for hire over the whole of said route, and the duty to carry, are alleged in broad terms. But it is also alleged that defendant is a corporation, organized and existing under the statute of the state, entitled "An act to provide for the incorporation of railroad companies, and the management of the affairs thereof, and other matters relating thereto," approved May 20th 1861.

Defendant having demurred to the complaint on the ground that the facts stated are insufficient to constitute a cause of action, the demurrer was sustained and judgment entered for defendant. Plaintiff appealed.

As we understand respondent's counsel, it is conceded that the facts, broadly stated, considered literally as they appear upon the face of the complaint, are sufficient, as they undoubtedly are; but it is claimed that, as the statute under which the corporation is formed appears on the face of the complaint, and as thereby "the character of the defendant, and its functions, and the general scope of its powers, also appear, the court can determine, notwithstanding the other strong averments, whether the law did impose the duty on the defendant, and that the other averments will turn out to be merely conclusions of law wrongfully alleged."

The point of the demurrer is, that the defendant is a corporation for the purpose of building and operating a railroad only, with no power or authority to build, own, or control a steamboat; that the acts complained of were committed on the steamboat and not on the railroad; that on that part of the line the defendant had no power to act or become liable as a common carrier; and that, as the corporation had no capacity to become a common carrier by steamboat, there could be no duty to carry the plaintiff by steamboat, and consequently no breach of duty arising out of the acts alleged in the complaint. In short, that in consequence of a want of power to become a carrier over the part of the route traversed by steamboat, the essential facts alleged are legally impossible, and, therefore, cannot constitute a cause of action. The defendant is alleged to be a common carrier of passengers and freight over this part of the line, as well as on the railroad, which is only continued to the wharf whence the steamboat starts. But, if by the law of its organization referred to in the complaint, the defendant had no legal capacity to contract to convey passengers

across the bay of San Francisco from the wharf of the defendant to the city of San Francisco, then the demurrer was properly sustained, notwithstanding the averment, and this question of power is the only point to be determined.

The act under which defendant was incorporated confers the powers generally and ordinarily conferred by similar acts upon corporations organized to build and operate railroads in the various states of the Union, with no special restrictions affecting the question: Laws of 1861, 615, §§ 3, 17; Hittell's Gen. Laws, par. 826, *et seq.* The second subdivision of § 17 authorizes the defendant: "To receive, hold, take, &c., as a natural person might or could do, &c., real estate and other property of every description, &c., to aid and encourage the construction, maintenance, and accommodation of such railroad." And the third subdivision authorizes it: "To purchase, &c., all such lands, real estate, and other property as the directors may deem necessary and proper for the construction and maintenance of said railroad, &c., and other accommodations and purposes deemed necessary to accomplish the objects for which the corporation is created." The fifth subdivision authorizes such companies: "To construct their roads across, along, or upon any stream of water, watercourses, roadstead, bay, navigable stream," &c. The sixth subdivision: "To cross, intersect, join, and unite its railroad with any other railroad, either before or after constructed, &c., with necessary turnouts, &c., and other conveniences in furtherance of the objects of its connections," &c.; and the eighth subdivision confers authority "to receive by purchase, &c., any lands or other property of any description, and to hold and convey the same in any manner the directors may think proper, the same as natural persons might or could do, that may be necessary for the construction and maintenance of said road, &c., or for any other purpose necessary for the conveniences of such companies, in order to transact the business usual for such railroad companies."

We will first consider the question on the hypothesis that defendant's route terminates at its wharf, and not at the city of San Francisco, as its name would seem to indicate, and that it does not own the steamer running from the wharf to San Francisco, or control that portion of the line. On this hypothesis, the first question is, had the defendant any capacity to contract to convey passengers and freight beyond the wharf—the terminus of

its line—to the city of San Francisco. It has long been settled by judicial decisions, both in England and the United States, under similar acts, that railroad companies may contract to carry passengers and freight beyond their own routes. So far as we are aware, with the exception of a single state (Connecticut), the decisions in England and the several states of the Union have been uniform in favor of the power. Redfield, in his able work on Railways, states the result of the decisions thus: “It was for many years regarded as perfectly settled law, that a common carrier, which was a corporation chartered for the purposes of transportation of goods and passengers between certain points, might enter into a valid contract to carry goods delivered to them for that purpose beyond their own limits. Most of the American cases do not regard the accepting a parcel marked for a destination beyond the terminus of the route of the first carrier as *primâ facie* evidence of an undertaking to carry through to that point. But the English cases do so construe the implied duty resulting from the receipt. But the cases, until a very recent one, do hold that a railroad company may assume to carry goods to any point to which their general business extends, whether within or without the particular state or country of their locality. And it has generally been considered, both in this country and in the English courts, that receiving goods destined beyond the terminus of the particular railway, and accepting the carriage through, and giving a ticket or check through, does import an undertaking to carry through, and that this contract is binding upon the company.” Id. 288. He then refers to the single case holding a contrary doctrine (*Hood v. N. Y. & N. H. Railroad*, 22 Conn. 502, in which there was a divided court), and vindicates the rule as established by the great weight of authority. The following are some of the cases which support the rule as stated: *Muschamp v. L. & P. Railway*, 8 M. & W. 421; *Watson v. Ambergate, Nat. & Boston Railway*, 3 Eng. L. & Eq. 497; *Scotthorn v. South Staff. Railway*, 18 Id. 553; *Wilson v. Y. N. & B. Railway*, Id. 557; *Crouch v. London & N. W. Railway*, 25 Id. 287; *Collins v. Bristol & Ex. Railway*, 36 Id. 482; *Weed v. Sar. & Sch. Railroad Co.*, 19 Wend. 534; *Far. & Mech. Bank v. Champ. Trans. Co.*, 23 Vt. 186; *Noyes v. Rut. & Bur. Railroad Co.*, 27 Id. 110; *Kyle v. Laurens Railroad Co.*, 10 Richardson 382; *Angle v. Miss. & M. Railroad Co.*, 9 Iowa 488;

Schroeder v. Hudson River Railroad Co., 5 Duer 61; *Hart v. Res. & Sar. Railroad Co.*, 4 Seld. 37; *Fitchburg & Worces. Railroad Co. v. Hanna*, 6 Gray 539; *N. Y., Alb. & Buf. Tel. Co. v. De Rutte*, 5 Am. Law Reg. (N. S.) 407; *Perkins v. Port Saco & Ports. Railroad Co.*, 47 Maine 573. In *Noyes v. R. & B. Railroad Co.*, REDFIELD, C. J., says: "It now seems to be well settled that railroad companies, as common carriers, may make valid contracts to carry beyond the limits of their own road, either by land or water, and thus become liable for the acts and neglects of other carriers, in no sense under their control:" 27 Vt. 111.

In *Perkins v. P. S. & P. Railroad Co.*, 47 Maine 573, the contract was by a railroad company in the state of Maine, to deliver packages of goods at Bloomington, in the state of Illinois. The court held it competent for the corporation to make such a contract. In the opinion the court says: "Upon a careful survey of all the authorities, we are satisfied that a railroad company may be bound, by special contract, to transport persons or property beyond the line of their own road. In granting the charter, all incidental powers which are necessary to the proper and profitable exercise of those which are specially enumerated may be presumed to be conferred by implication. The business of common carriers between the different places is intimately interwoven, branching off into innumerable channels. And it is often of great public convenience, if not of absolute necessity, that several companies should combine their operations, and thus transport passengers and merchandise by a mutual arrangement over all their lines, upon one contract, for one price. In such cases each is held liable for the whole distance: *Fairchild v. Slocum*, 19 Wend. 329; *F. & W. Railroad Co. v. Hanna*, 6 Gray 539. And we think a company may be bound, even without any actual arrangement with the connecting lines, if, by their agents, they hold themselves out to the public as common carriers to a place beyond the limits of their own road."

However forcible the reasons might seem for a more limited construction of the powers of corporations in this respect under the ordinary acts authorizing the organization of railway companies, if the question were a new one, we should not feel authorized to disregard such an almost unbroken array of authorities. The interests, both of the companies and the public, are, doubt-

less, also best subserved by the construction established. With respect to the English cases, some of the later ones might, perhaps, if necessary, have been aided by an express provision of a statute (8 Victoria), to which we shall have occasion to refer, but the leading case of *Muschamp v. Lancaster & Preston Railroad*, and some others, were decided before the passage of the act referred to; and they seem to have been decided wholly independent of any statutory provision. In none of the American cases does this statute appear to have been noticed.

It is insisted, however, by the respondent, that the cases of the class cited are all upon express contracts to carry beyond the route of the company; that, at least, it was optional with the parties whether to contract to carry and deliver beyond the termini of their respective roads; that they did so expressly contract, and thereby voluntarily assumed the liability beyond that which the law imposed on them as carriers over their own roads; and that for this reason the cases are not authorities in the case at bar, in which the defendant exercised its option and refused to contract to carry beyond its own road, or to assume responsibilities beyond those which the law imposed on it as a carrier to the end of its route. But we have seen that it was competent for the defendant to contract in the character of a common carrier of passengers and freight beyond the terminus of the road. And the complaint avers that the defendant is a common carrier over the whole line. If the defendant is competent to contract for the whole distance in the character of a common carrier, without reference to the termination of its road, and holds itself out as a common carrier, ready to contract with all persons but the plaintiff, and does contract generally with all who offer to traverse the route with them—then it is a common carrier for the whole distance under the law, without reference to the termination of its road; and it is its duty, as such carrier, to contract with and convey the plaintiff with the rest. The allegation of the complaint is that defendant is such carrier. The allegation is sufficient, if the proof should be sufficient to sustain it. And the allegation, if the fact alleged is legally possible, is admitted by the demurrer. The allegation also is, that the plaintiff entered upon the cars of the defendant, upon a regular train, at a regular station for the reception of passengers, to be carried to San Francisco, and there tendered the regular fare for the entire distance,

and that the defendant refused to take him, and when at the end of the railroad ejected him from the steamboat which would otherwise have carried him, and which did, on the same trip, carry the other passengers to the end of the line. The precise point was determined in *Crouch v. London & N. W. Railway*, 25 L. & Eq. 287. In that case there were two causes of action alleged in separate counts—one for breach of duty in refusing to carry, as a common carrier of goods and chattels, for hire, a package of goods for plaintiff, from Euston Square station, Middlesex county, England, to Glasgow, in Scotland; and the other in refusing to convey from the same station to Sheffield, in the county of York, England. The defendant's line toward Glasgow ended at Preston, at which place it connected with another and different road—the Lancaster and Carlisle Railway, which extended to Carlisle, where it connected with still another road—the Caledonian Railway, which was nearly all in Scotland, and extended to Glasgow. On the route to Sheffield the defendant's line ended at Rugby, at which point it connected with the Midland Railway, which extended to Sheffield. These roads were all owned by different companies organized under different Acts of Parliament. There was an arrangement, however, between the defendant and the other companies by which the defendant loaded its own van and locked it; and it passed through the entire distance over the other roads to Glasgow and Sheffield respectively, the several companies furnishing the steam power and management on their own roads, conveying it through to its destination for the defendant. The plaintiff himself was a common carrier of packages, which he collected in small parcels from his customers in London, and packed into one or more large parcels, called "packed parcels," and sent them to Glasgow, Sheffield, and other points, to his local agents, to be distributed to the parties to whom the several smaller parcels were respectively addressed; he depending upon and using the railways of defendant and other companies in the ordinary course of his business, as common carrier of parcels for the purpose of forwarding the goods to his local offices. The officers of the defendant made an order upon their minutes, directing that "packed parcels" should be received or invoiced to the termini of their lines only, and gave instructions accordingly to their servants, of which order plaintiff had notice. They had not, however, at the time when the breach of

duty complained of occurred, enforced the order with reference to merchants, traders, and parties other than the plaintiff, who was himself sending such packages in the exercise of his own ordinary business of common carrier. Under these circumstances, in the ordinary course of his business, the plaintiff tendered a "packed parcel" to the defendant at its station, at Euston Square, London, in time for the regular mail train of defendant for Sheffield; also a similar package in time for the train for Glasgow, at the same time tendering the ordinary charges through, and defendant refused to receive them on the ground that they were "packed parcels." The plaintiff then paid the charges to the end of the routes of the defendant, and they were received and forwarded to the end of their roads, and delivered to the connecting companies, who transmitted them on to their destination, where they arrived in due time by that mode of carriage, but the package for Sheffield arrived some seven, and the package for Glasgow some twenty hours later than they would have done had they been received and booked, and had defendant undertaken to carry for the entire route. The expense by the several transfers was also increased. The defendant at the same time, and by the same train, received, carried, and delivered "packed parcels" for other parties. The question was, whether defendant was liable for breach of duty in refusing to carry beyond the termini of its own lines. The fifty-eighth and fifty-ninth pleas raised the question, whether the defendant could become a common carrier beyond the limits of its own line, on the ground that anything beyond such limits would be *ultra vires*. But a demurrer having been interposed, so little confidence had counsel in these pleas, that they were abandoned by them on the argument (25 Eng. L. & Eq. 289). It was then contended that the defendant was a common carrier only to the extent of its own line for ordinary parcels. Secondly, that at all events it was a common carrier only to the extent of its own line with respect to "packed parcels." Thirdly, that as Glasgow is beyond the realm, the defendant could not be a common carrier, nor bound to convey from London to Glasgow in the sense of the averment in the declaration. The court have no difficulty with the first two propositions, and only spend time in discussing the last. JERVIS, C. J., says: "I am of opinion that the plaintiff is entitled to our judgment. The effect of the eighty-sixth, eighty-seventh, and eighty-ninth sections

of the Railways Clauses Act is to put this company, the defendants, on the footing of common carriers, and the question is, whether, viewing them in that character, they are liable in the present form of action. I think they are liable on the first count, that, holding themselves out as common carriers in England, and professing as such to carry from London to Glasgow, they are liable for refusing to accept goods to be carried from the one terminus to the other. It is not denied now, although the authorities upon the subject are not numerous, that if a person holds himself out as a common carrier from London to Oxford, both termini being within the realm, he is bound to carry, within reasonable limits, all goods that may be tendered to him to be carried from London to Oxford. The only question on this part of the case is, whether that rule applies where one of the termini is a place out of England; and I think it does. If a person who holds himself out as a common carrier accepts goods, the common law of England, that is, the law founded on the custom of the realm, engrafts on such acceptance a contract to take and safely carry the goods, and to deliver them as an insurer, with certain exceptions, viz.: the acts of God and the king's enemies.

"It was admitted during the argument, and could not be denied, that if the defendants had accepted the goods in London the common law would have engrafted on their contract an obligation to carry them to Glasgow, subject to the liability I have mentioned. The case of *Morse v. Slue* would seem to be an authority to that extent, and the commentaries on that case seem to put the matter beyond doubt. Then, if it is admitted that when once they have held themselves out as common carriers, there is engrafted on their acceptance of the goods the common-law liability to carry, even if they are to carry beyond the realm, it would seem also that they are subject to the other part of the common-law liability, namely, to accept within reasonable limits all goods that may be tendered to them to carry. If, therefore, being carriers within the realm, they are bound to take the goods offered to them to be carried within the realm, it follows that if they profess to be carriers beyond the realm, being themselves at the time they so profess within the realm, they are bound to accept and to carry goods beyond the realm upon the same terms on which they profess to contract. On the first point, therefore, I am clearly of opinion that the count is good which charges them with that lia-

bility, and that they are liable for their breach of duty in refusing to carry, having held themselves out as common carriers, and professed to carry goods for all persons to Glasgow.

“The second point, that they were not carriers to Sheffield, is disposed of by the evidence, which shows that they were carriers not only from London to Rugby, but on to Sheffield. They are also carriers to Sheffield of packed parcels. Their practice is to carry packed parcels in every case except for the plaintiff. Although it is true that their liability rests on the professions which they hold out, and as found in the case, that they have given directions that they would only carry packed parcels to the terminus of their own line, still, their uniform course of conduct and practice with regard to the rest of the world has been in direct contradiction to these directions. They do carry packed parcels to Sheffield, and the law will not allow them to say: ‘We will, in fact, carry for ninety-nine of the public out of a hundred to Sheffield, and for the hundredth we will only carry to Rugby.’ They are common carriers and must adopt the same course of practice to all; and it being found in the case that it was their habit to carry packed parcels for everybody but the plaintiff, they must act with the same justice to him as to the rest of the world:”
Id. 298.

The learned Chief Justice refers to the 86th, 87th, and 89th sections of the Act of 8th Victoria, before mentioned in this opinion. We have examined those provisions to see what bearing they have upon the case. The 86th section contains substantially the same provision as the ninth subdivision of section 17 of our Railway Act, before cited. The 87th section authorizes a railway company to contract with any other railway company for the passage of its engines, coaches, wagons, or other carriages over the road of such other company upon such terms as may be mutually agreed upon by the contracting parties. The 89th section simply provides that railway companies shall not be subjected to other or greater liabilities than were imposed on common carriers by the common law (stats. 8 Vict. p. 124, ch. xx., sects. 86, 87, 89, Lond. Law Jour. 1845). But, as has been before remarked, it was decided in England before the passage of this act, and apparently without reference to any express statutory provisions on the subject, that railway companies could render themselves liable by contract to carry beyond the termini of their roads—that the

capacity to make such contracts existed. On this point, then, the statute could have added no new power. The most that could be claimed for the 87th section as to this point, if it were necessary to invoke it, is, that it is applicable to railways within the realm, and that to that extent a power in railway companies to contract beyond their own lines may be implied from the express authority to contract with other companies to run their carriages over the road of such other company. And possibly as much may be inferred from the authority found in our act for one company to unite its road with any other railroad. It may, however, be argued with equal plausibility, that the power to contract to carry beyond the line of any company having been before established by judicial decision under the general powers conferred by the statutes as they then stood, the power contained in the 87th section was given to facilitate and encourage the exercise of the other power which already existed, and thereby secure greater expedition in the transaction of business, and greatly subserve the interest of both railway companies and the public.

We have already seen that the power in a railroad corporation to contract to carry beyond the terminus of its own road is established in this country by an almost unbroken chain of decisions. In *Willey v. West Cornwall Railway* (a late English case cited by Redfield from 30 Law Times 261), it is stated to be "also said that the company are as much bound by contract to carry beyond their own route, where the transportation is partly by water, as if it were all by rail, and that the company cannot defend upon the ground that a contract to carry beyond their own route is *ultra vires*" (Red. on Rail. 287, note). The case is not accessible in any other form, and is therefore cited as stated in Redfield's note. This is in consonance with the principle announced in *Noyes v. R. & B. Railroad Co.*, 27 Vt. 111, before cited, where the Chief Justice says: "It seems to be now settled that railroad companies, as common carriers, may make valid contracts to carry beyond the limits of their own road, either by land or water, and thus become liable for the acts and neglects of other carriers in no sense under their control." And this result also necessarily follows from the principles adopted in all the other cases.

This power to make a contract with one party to convey beyond the terminus of the road being established, it follows that any

number of such contracts may be made with other parties, and that the corporation making them may, by contracting and holding itself out as ready to contract generally with all parties standing in the same relation to it, and by its general course of business become a common carrier beyond its own line. The principle established by the case of *Crouch v. N. W. Railway* is, that corporations having the power to contract and become common carriers beyond their lines within the realm, have power to become such beyond the realm; that having the capacity to contract and become common carriers beyond their lines of road, they become such by holding themselves out to be common carriers, and that when the common-law liability to carry both within and beyond the realm once attaches by reason of such holding out, they are also subject to the other part of the common-law liability, namely, to accept, within reasonable limits, all goods that may be tendered to them. In the language of the Chief Justice, before cited: "If, therefore, being carriers within the realm, they are bound to take the goods offered to them to be carried within the realm, it follows that if they profess to be carriers beyond the realm, being themselves at the time they so profess within the realm, they are bound to accept and to carry goods beyond the realm upon the terms they profess to contract:" 25 Eng. L. & Eq. 298. The principles, of course, apply to carriers of passengers as well as to carriers of goods.

Upon the authorities cited and principles stated the defendant in this case had power to contract, and to incur the duties and responsibilities of a common carrier of freight and passengers for hire over the entire line described in the complaint, irrespective of the question as to whether it legally owned or controlled the steamer by means of which a portion of the carriage was to be effected. The averment, then, "that defendant was a common carrier of such freight and passengers for hire on said railroad and steamboat," is the averment of a fact possible in law as well as in fact, and the fact averred is admitted by the demurrer.

But it is alleged that said defendant "was the owner and proprietor, and had under its management, direction, and control a certain railroad, together with the tracks, cars, locomotives, and other appurtenances thereto belonging, and was also the owner and had under its control, management, and direction a certain steamboat known as and called by the name 'Sacramento,' that

said railroad ran from the wharf of said company, on the east side of the bay of San Francisco, in the county of Alameda aforesaid, and extended to the interior of said county to a place known as 'Haywards,' a distance of some sixteen miles or thereabouts; that said steamer, under the management and control of defendant, connected with said railroad at said wharf for the purpose of carrying freight and passengers to and from San Francisco on the west side of said bay, forming one continuous line of railway and steamboat transportation to and from the places above named and intermediate stations on the route of said road, carrying thereupon freight and passengers for hire, and that defendant was a common carrier of such freight and passengers for hire on said railroad and steamboat." And it is insisted by the appellant that the ownership and control of the whole line, including the steamer, is, or may be, under the law strictly within the route and powers of the defendant as a railroad company, by the express terms of section 17 of the statute under which it is organized. That the steamer may be and is a part of the "other property of any description," which the defendant is authorized "to hold" for "any other purpose necessary for the conveniences of such companies, in order to transact the business usual for such railroad companies."

We all know, as a part of the general geography of the country, that in constructing railways large and navigable rivers, creeks, bays, and arms of the sea are, and must of necessity often be crossed; that when the necessity arises, they are crossed sometimes by means of expensive bridges, upon which a railway track is laid, and which thus literally become a part of the railway itself; that at other times, where the waters of the river, creek, bay, or arm of the sea are so broad and deep as to render bridging impracticable, or where a bridge would be too great an obstruction to navigation to render such a mode of crossing admissible, the object is effected by means of a steamboat—a steam ferry. Such instances may be found on lines or connecting lines of railways crossing the Susquehanna, Delaware, Hudson, Ohio, Mississippi, and other large and navigable rivers. Sometimes these occasions for the employment of steam ferries or bridges arise in the course of the line of the road, and sometimes at the point separating the land road from the city, which is the ultimate starting-point or destination of all passengers and freight

which pass over it—the substantial terminus of the road. Any party who has travelled over the line of railway from New York to Washington, has had occasion to know that there are at least three of these steam ferries, which constitute indispensable links in the line of railroad travel—one of which must be crossed at the beginning of the route, and the others on the way. Will it be pretended when such a necessity for using a steamboat upon the line of the road arises, that the steam ferry is not substantially and in legal contemplation a part of the road—as much so as the bridge would be at the same point, if a bridge were practicable or otherwise admissible? That it would not be “necessary for the conveniences of such company, in order to transact the business usual for such railroad company,” within the meaning of the provision of the statute? How would it be possible to carry on the business of such railroad companies successfully, and in a manner to subserve the public interest, and fully accomplish the ends for which the corporation was created without such conveniences? It is manifest to us that the right to own and control steamboats for the purposes of ferriage, under such circumstances, is a necessity, and clearly within the powers conferred by the statute. Are these conveniences any the less necessary or proper because they happen to be at the end instead of in the middle of the route? Take the city of New York, for an example, the great commercial metropolis of the continent—the centre to which most of the extensive systems of railways of the country tend, and really the ultimate point upon which the vast commerce and travel passing over them is discharged. We all know it is situate on an island, and that not a railroad can enter its precincts unless over a bridge, or by means of a steam ferry. Does the railway which purports to extend to New York terminate on the opposite side of the strait, or river, or bay? Are the proper functions of the various railways, purporting to terminate at that city, properly and completely performed under the law of their creation, when their myriads of passengers and millions of tons of freight are poured out of their cars on the banks of the river, strait, or bay, opposite New York, in sight only of the promised land? We think not, and that the full performance of their duties to the public requires that they should own and control, not such conveniences merely, but absolute necessities, as steamboats for ferrying over their passengers and freight. In no other way can

the public interests be adequately subserved, and the objects of the creation of such corporations be completely accomplished. It is one thing to build and own a line of steamers to some foreign country, or some distant port, carrying on a wholly distinct and independent business entirely foreign to the objects of a railroad corporation, which might just as well, and a great deal better, be transacted by some other company organized for the purpose; and quite another, to own and control a steamboat for crossing rivers and bays which lie in the line of the road, and the use of which is convenient, proper, and necessary to a successful accomplishment of the objects for which the road is built and operated. The cases cited by the respondent are of the first class, and were mostly brought by stockholders to restrain the directors from misappropriating the funds of the corporation to objects not within the scope of its powers, and not actions by third parties against the corporation for breaches of contracts or duties. They do not, therefore, conflict with the views we have suggested.

We all know, also, that the city of San Francisco is situate something like New York, and wholly inaccessible to any railroad except from the south, without making a detour of one hundred miles or more, or the use of some means of transportation across the bay by water. This particular fact is not set out in the pleadings, but it may be hypothetically assumed for the purposes of argument and illustration. If this be so, and it is possible to be so, it may be convenient and necessary for a railroad from the north, north-east, or east, designed to terminate at San Francisco, the commercial metropolis of the Pacific coast, to own and control a steam ferry to facilitate the legitimate ordinary business of the company, and subserve those public interests which it was contemplated would be promoted when the act under which the defendant is organized was passed. The act, as we have seen, authorizes companies organized under it, "to construct their roads across * * * any roadstead, bay, navigable stream," &c. (sec. 17, Sub. Fifth). It may be that the waters of the Bay of San Francisco are too deep to admit of bridging, or construction of a road, literally so called, or that the interests of navigation would render such a proceeding inadmissible. In such event the only practicable mode of crossing and connecting the road with its ostensible and substantial terminus, the city of San Francisco, might be by means of steamboats, which might therefore

be rendered necessary and convenient to the defendant in properly transacting the ordinary business for which it was organized. If so necessary to the accomplishment of the proper objects of its creation, and the successful transaction of its ordinary business, we think the ownership and control of a steamboat for that purpose would be within the powers incidental and express conferred upon the defendant by the act.

If the views expressed are correct, and we have no doubt they are, it follows that the facts alleged as to the control of the steamboat by defendant are legally possible, and the truth of the allegations is admitted by the demurrer. We think the court erred in sustaining the demurrer.

Judgment reversed, with directions to the District Court to vacate the order sustaining the demurrer, and permit defendant to answer upon the usual terms.

Supreme Court of Arkansas.

MARY H. BOWMAN v. ELISHA WORTHINGTON.

Alimony has no existence at common law as a separate and independent right, but only as an incident to a proceeding for some other purpose.

There is no inherent jurisdiction in a court of chancery to grant alimony.

A divorced wife, having married again, is not entitled to alimony from her first husband.

The Circuit Courts of Arkansas have jurisdiction of divorce and alimony, but the latter is incidental to the former and cannot be granted in a separate suit where it is the only relief sought.

APPEAL from the Chicot Circuit Court in Chancery.

Appellant, who was also plaintiff below, married respondent in 1840, in Kentucky, and resided afterwards in Arkansas for a short time, when, in consequence of his adultery, she left him and returned to Kentucky, where in 1843 she was divorced by a special Act of the legislature of that state. In 1847 she married Bowman, who died in 1854.

In 1866 she commenced this suit for alimony from her first husband, and set forth the foregoing facts in her bill. Defendant demurred specially for the following reasons, among others:—

1st. That the power of the Circuit Court to grant alimony, depends entirely on the statute, by which alimony is dependent